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6 IN THE UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 LIBERTY MUTUAL INSURANCE COMPANY,
10 as subrogee of FILA USA, INC.,

11 Plaintiff,
12 vs.

13 EXPEDITORS INTERNATIONAL OCEAN,
14 INC. and EXPEDITORS INTERNATIONAL OF
15 WASHINGTON, INC.,

16 Defendants.

17 IN ADMIRALTY

18 CASE NO.: 2:22-cv-00007

19 **COMPLAINT**

20 Plaintiff Liberty Mutual Insurance Company, as subrogee of Fila USA, Inc. ("Liberty"),
21 for its Complaint against the above-named Defendants, alleges upon information and belief:

22 **I. JURISDICTION AND VENUE**

23 1.1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the
24 Federal Rules of Civil Procedure.

25 1.2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333.

26 1.3. Venue is proper because the Defendants may be personally served within
this district.

27 **II. PARTIES**

28 2.1. Plaintiff Liberty is the duly subrogated marine insurer of the shipment described
herein, having an office and principal place of business at 175 Berkeley Street,
Boston, Massachusetts, 02116.

1 2.2. Defendant Expeditors International Ocean, Inc. is a Delaware corporation,
 2 and Defendant Expeditors International of Washington, Inc. is a Washington corporation.
 3 Both defendants (collectively referred to as “Expeditors”) are corporations or other business
 4 entities duly organized and existing under the laws of their respective places of incorporation and
 5 are doing business as common carriers of goods by water for hire, with an office and principal
 6 place of business at 1015 Third Avenue, 12th Floor, Seattle, Washington, 98104.

7 **III. RELEVANT FACTS**

8 3.1. Liberty provided a policy of marine cargo insurance (the “Policy”) to Fila USA,
 9 Inc. (“Fila USA”). The Policy provided coverage for loss or damage to marine cargo, subject to
 10 the terms, conditions, and limits of the Policy

11 3.2. Fila USA entered into a valid and enforceable contract with Expeditors for the
 12 carriage of textiles and footwear (the “Shipment”) from Xiamen, China, to Los Angeles,
 13 California.

14 3.3. On or about December 26, 2020, Expeditors and and/or its employees,
 15 representatives, agents, affiliates or subcontractors, including carriers, took possession of the
 16 Shipment. The Shipment was delivered to Expeditors and/or its employees, representatives,
 17 agents, affiliates or subcontractors in good order and undamaged condition.

18 3.4. Expeditors issued a bill of lading numbered 63E1159694 evidencing both receipt
 19 of the goods in good condition and the contract of carriage between Fila USA and Expeditors.
 20 A true and correct copy of this bill of lading has been attached hereto as Exhibit #1.

21 3.5. The Shipment was subsequently carried from Xiamen by water aboard the vessel
 22 MAERSK ESSEN.

23 3.6. When MAERSK ESSEN arrived in Los Angeles, the Shipment was not
 24 discharged in the same good order and undamaged condition in which it was received by
 25 Expeditors. Instead, the Shipment had been lost overboard while in the care and custody or
 26 constructive care and custody of Expeditors, and was not recovered.

1 3.7. Expeditors breached its contract with Fila USA by failing to deliver the Shipment
 2 to Los Angeles in the same good order and condition in which it was received by Expeditors.

3 3.8. Following the loss of the Shipment, Fila USA submitted a claim to Liberty
 4 pursuant to the Policy. Liberty accepted coverage, and made payments as required by the Policy.

5 3.9. As the direct and proximate result of the loss of the Shipment, Liberty made
 6 payment to Fila USA pursuant to its obligations under the Policy in an amount to be proven at
 7 trial, currently believed to be \$81,399.04. As a result, Liberty is contractually and equitably
 8 subrogated to the claims of its insured.

9 3.10. Pursuant to WAC 284-30-393, “[t]he insurer must include the insured’s
 10 deductible, if any, in its subrogation demands.” The Policy provided for a deductible in the
 11 amount of \$5,000.00, which was applied to the payments Liberty made to Fila USA.
 12 Accordingly, Liberty seeks recovery of this amount.

13 3.11. Expeditors is liable to Liberty for breach of the contract between Expeditors and
 14 Fila USA. Liberty is entitled to recover from Expeditors all damages incurred as the result of the
 15 loss of the Shipment, including Liberty’s \$81,399.04 payment to Fila USA, and Fila USA’s
 16 \$5,000.00 deductible.

17 **IV. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

19 1. For issuance of process in due form of law against Defendants citing them each to
 20 appear and answer;

21 2. For damages in the amount of \$86,399.04, or an amount proven at trial.

22 3. For prejudgment and post-judgment interest in an amount allowed by law;

23 4. For attorneys’ fees, costs and expenses of suit as allowable by law; and,

24 5. For such other relief as the Court may deem just and proper.

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1 DATED this 4th day of January, 2022.
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NICOLL BLACK & FEIG PLLC

/s/ Jeremy B. Jones

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*Attorneys for Plaintiff Liberty Mutual
Insurance Company, as subrogee of
Fila USA, Inc.*